## GOVERNMENT OF MYSORE.

FOOD, CIVIL SUPPLIES AND LABOUR DEPARTMENT (LABOUR).

*Labour Dispute.*—Industrial Dispute between the Workmen and the Management of Canara Public Conveyance Ltd., Mercara.

Award of the Labour Court, Bangalore.—Published

Read the following papers :—

(1) Letter No. 1584/68-69, dated 2nd March 1968 from Shri P. T. Kadkol, Presiding Officer, Labour Court, Bangalore.

## BEFORE THE PRESIDING OFFICER, LABOUR COURT, BANGALORE.

*Dated this 2nd day of March 1968.*

*Present*

Sri P. T. Kadkol, B.Sc., LL.B., Presiding Officer.

**Reference No. 146 of 1956.**

Workmen represented by the Secretary, Coorg District General Workers' Union, Mercara. *I Party.*

*Vs.*

The Management of Canara Public Conveyance Limited, Mercara. *II Party.*

*Reference*

Government Order No. LMA 534 LLD 66, dated 5th December 1966.

### AWARD

The Government of Mysore being of opinion that an Industrial dispute exists between the workmen and the management of M/s. Canara Public Conveyance Ltd., Mercara have referred it to this court for adjudication under Section 10 (1) (c) of the Industrial Disputes Act, 1947, by their Order No. LMA 534 LLD 66, dated 5th December 1966, setting out the following points of dispute for adjudication :—

> "(1) Whether the Management of C. P. C. Company Limited, Mercara Branch, is justified in dismissing from service Sri P. A. Poovaiah, clerk, of the Office, with effect from 9th September 1965? If not, to what relief, if any, Sri. Poovaiah is entitled?"

2. The aggrieved workman Sri. P. A. Poovaiah, who was working as a clerk in the C.P.C. Company Ltd., Mercara, has been dismissed from service, by the Management thereof, after being found guilty of misconduct at a domestic enquiry. His dismissal, is the subject matter of this Reference. His cause has been sponsored by the Coorg District General Workers' Union, Mercara. This Union, as representing the workman, is the First Party and the Management of the C.P C Company is the Second Party in this proceeding. Mr. M. C. Narasimhan and Mr. Kuttappa have appeared for the Union and Mr. K. Shashidhar Rao has appeared for the Management.

3. The Union has submitted the claim statement dated 3rd January 1967 on behalf of the workman, challenging the dismissal of Poovaiah. The Management has submitted its statement of objections dated 11th January 1967. It has contended, *inter alia*, that the present dispute is only an individual dispute and not an industrial dispute and hence, this court has no jurisdiction to adjudicate upon it.

4. When the proceeding came up before me in Mercara Camp on 30th August 1967, Mr. Kuttappa, appearing for the Union, submitted that he claimed the present dispute to be an industrial dispute only on the basis of Section 2-A of the Industrial Disputes Act, 1947 and not on any other ground, namely, on the ground of its having been sponsored by a Trade Union or on the ground of its having been supported by a substantial or considerable section of the workers. I have made a note of this submission in the order sheet for the date, under the signatures of Mr Kuttappa and Mr. Shashidhar Rao. Therefore, on the basis of this submission, I have framed and set down only the following preliminary issue for hearing :—

> 'Can the referred dispute be considered to be an industrial dispute by virtue of Section 2 A of the Industrial Disputes Act, which came into force on 1st December 1965, on the ground that this order of Reference has been made after that date?"

Parties were directed to lead evidence, if any, on this issue. They submitted that they had no evidence to lead Thereafter arguments were addressed to me. Mr. M C. Narasimhan argued the issue on behalf of the Union and Mr. Shashidhar Rao argued it on behalf of the Management.

5. The worker Poovaiah has been dismissed by the Management with effect from 9th September 1965. Section 2-A of the Industrial Disputes Act has come into effect from 1st December 1965. The Order of Reference has been made on 5th December 1966. These dates are not in dispute. It is, thus clear that Section 2-A was not on the statute, on the day Pooviah was dismissed. It was, however, in force, on the day this Reference was made So, the question arising for decision would be whether Section 2-A would govern this case.

6. Section 2-A of the Industrial Disputes Act, was put on the statute by the Industrial Disuutes (Amendment) Act of 1965. This amending Act received the assent of the President of the Union of India on the 19th of November 1965. The section reads as under :—

> "S. 2-A. Dismissal, etc., of an industrial workman to be deemed to be an industrial dispute—Where any employer discharges, dismisses, retrenches or otherwise terminates the services of an individual workman, any dispute or difference between that workman and his employer connected with, or arising out of, such discharge, dismissal, retrenchment or termination shall be deemed to be an industrial dispute notwithstanding that no other workman nor any union of workman is a party to the dispute."

Section 1 (2) of this Amending Act lays down that it would come into force on such date as the Central Government may, by notification in the official Gazette, appoint. The Central Government published Notification No: S.O 3751 dated 27th November 1965 under Section 1 (2) of the Amending Act. The Notifeation reads as under :—

> "In exercise of the powers conferred by sub-section (2) of of Section 1 of the Industrial Disputes (Amendment) Act, 1965, (35 of 1965), the Central Government hereby appoints the 1st day of December 1965 as the date on which the said Act shall come into force."

7. Mr. Shashidhar Rao urges that Section 2-A is not retrospective in effect or operation ; it was not on the statute when the cause of action arose *i e.*, on the day Poovaiah was dismissed ; the fact that it was in force on the date of the order of reference is immaterial and hence I should hold that the present dispute is not at all an industrial dispute.

8. On the other hand, Mr. M. C. Narasimhan urges that Section 2 A envisages only proceedural law; it does not create any new rights nor does it divest any vested rights; so the question whether it is retrospective in effect or operation is not at all relevant; even assuming it is relevant, the provision requires to be deemed as retrospective; the material point of time to decide the issue is, the date on which the Order of Reference has been made Section 2-A was in force on that date; hence it must be held that the present dispute is an industrial dispute.

9. So, the first point I would like to discuss would be whether Section 2 A introduces only a proceedural law or envisages some substantive law. If the former, the question whether it is or is not retroactive will lose significance. This view expressed by Mr. M. C. Narasimhan is fully supported by Maxwell (on Interpretation of Statutes) at page 198, wherein it has been stated that no person has a vested right in any course of proceedure. If on the other hand, Section 2 A envisages some substantive law, either affecting vested rights or enlarging them, then it must be decided whether or not it is retroactive.

10. The Industrial Disputes Act is primarily meant for regulating the relations between the employers and the workmen. Promotion of measures for securing and preserving amity and good relations, investigating and settlement of industrial disputes, giving reliefs to workmen, collective bargaining etc, are some of the salient features of the Act. The Act provides that a workman can challenge the action of the Management and seek suitable reliefs. This provision made in the Act is nothing but a *Right* vested in him by the Statute. This Right is not a mere matter of procedure. It is only those provisions which deal with the question as to how and where and the manner in which the Right should be exercised, are matters of procedure. There can be no matters of procedure unless, in the first instance, there is a right.

11. Suppose a workman is dismissed by the Management wrongfully. The common law gives him the right to challenge his dismissal and seek suitable reliefs. The Code of Civil Procedure and the Limitation Act lay down how that right should be exercised and within what time. The provisions of the Industrial Disputes Act would not govern such a case. If the Management is an industry, and the workman is an industrial employee, then the dismissed workman has still the right to

proceed under the common law. He can, however, approach the Industrial Conrts only if the dispute relating to his dismissal is an Industrial Dispute. To pursue the instance of the dismissed workman, the dispute regarding his dismissal is primarily and essentially an individual dispute. But this individual dispute is capable of becoming or developing into an industrial dispute, if certain conditions are satisfied. This individual dispute becomes an industrial dispute only if it affects the workmen as a class and the cause of the dismissed workman is espoused by a substantial or considerable section of the workmen of the same establishment or by a Trade Union of the workmen of the same establishment of which, he too is a member and there is a community of interest between the workmen or the Trade Union representing them. Prior to the introduction of Section 2-A in the Industrial Disputes Act, a dismissed workman, if he wanted to exercise his right of challenging his dismissal and seek the reliefs envisaged by the Industrial Disputes Act. was required to prove that his cause had been espoused by a substantial or considerable section of the other workmen of the same establishment and that there was a community of interest between them or his cause had been espoused by a Trade Union of the workers of the same establishment and of which he was a member. The support of the dispute by stranger unions too could convert an individual dispute into an industrial dispute in case a considerable section of the workers of the establishment were members of such a stranger union and they had, by a resolution, supported the cause of the dismissed workman. This means that the dismissed workman carried the heavy burden of proving many facts, before he could call upon the Industrial Courts to adjudicate upon his dispute, in exercise of his right to challenge the dismissal. By the introduction of Section 2-A in the Industrial Disputes Act, the Legislature has removed this burden that lay on the workman. This means that the Right of the workman is enlarged to some extent. The words appearing in Section 2-A to the effect that such dispute "shall be deemed to be an industrial dispute" intraduce only a legal fiction. For purposes other than disputes arising out of dismissal, discharge, retrenchment, termination etc., the old law still remains good. For instance, a workman, to whom promotion has been wrongfuly denied by the Management, has still to prove that his dispute is an industrial dispute, according to the principles of law set out above. Section 2-A, by a legal fiction, has raised the status of an individual dispute to that of an industrial dispute, in the few cases enunciated therein.

This change brought about by Section 2-A can not be considered merely as procedural. It is definitely a change in substantive law. I would therefore reject the contention of Mr. M. C. Narasimhan and hold that Section 2-A introduces a piece of substantive law and it is quite necessary to determine whether it is prospective or retrospective in its effect and operation.

12. According to the general principles of law, all legislations are prospective in effect and operation unless they are made retrospective specifically or by necessary implication. To find out if the legislation has a retrospective effect, we shall have to examine the language employed by the legislature. The language employed in Section 2—A is "when any employer discharges" etc., the dispute "shall be deemed to be an industrial dispute". All these words indicate that the provision is only prospective and not retrospective. If it were the intention of the legislature to make the provision retrospective in effect and operation, it could have said that "when any employer discharges or has discharged an individual employee" or words to that effect and it could have also said "shall be deemed and/or shall be always deemed to have been an industrial dispute" or used words conveying such meaning. But such words or phrases have not been employed in Section 2—A of the Act. Moreover, Section 1 (2) of the Amending Act says that the amended provision shall come into effect on such future date as the Central Government appoints. Even this provision indicates that Section 2—A was always intended to be prospective-and prospective from the date that the Central Govern. ment would appoint at a future date. Hence I am of the view that Section 2—A would be applicable only to cases of discharge, dismissal, retrenchment, termination etc., that take place only on and after 1st December 1965 and would not cover such cases that have taken place prior to that date. It may also be noted that Section 2—A of the Act bestows a substantial right to an individual workman, if he is dismissed etc., to have the dispute adjudicated under the Industrial Disputes Act. This is not merely procedural law. It does not give merely a choice of forum. The rights conferred on a workman under the Industrial Dispute Act, are very much higher than those he gets under the common law of the land. Considering, therefore, all these facts and circumstances and particularly the language employed by the legislature in Section 2—A of the Act, I am of the view that the said section is not at all retrospective but only prospective in effect and operation. Pooviah, having been discharged, dismissed, or terminationed

before 1st December 1965. can not seek the aid of Section 2—A of the Act to say that the present dispute is an incustrial dispute..

13. I am fortified, in the view taken by me, by three decisions of the Supreme Court. In A. I.R. 1967 S. C. 38 (Burn and Co , Calcutta —Vs— Their employees) the Supreme Court has held that the provisions of the Industrial Disputes Act have no retrospective operation and sections inserted in the Act by the amending Acts must be taken to be only prospective, so that they come into operation only on the dates on which the amending Act, by which they were introduced into the Principal Act came into force. Then in A. I R 1957 S. C. 96 (Pipraich Sugar Mills Ltd.,—Vs—Pipraich Sugar Mills Mazdoor Union) the Supreme Court has held:

> "When deciding on rights of the parties regard must be had only to the law as it stood before an amendment of the Act has come into force.
>
> In the present case, the rights of the parties to the appeal had accrued before the amending Act 43 of 1953, whereby Section 2 00 and Section 25 F were inserted in the Act, came into force.
>
> Held, in the circumstances the right of the workmen to compensation as a result of their discharge upon closure of the undertaking had to be decided in accordance with the law as it stood before Act No. 43 of 1953 came into force."

Then again the Supreme Court has held in A. I. R. 1958 S. C. 204 (Patna Electric Supply Co., Ltd., Patna *Vs.* Bali Rai) :—

> "Section 2 (*oo*) which defines retrenchment and Section 25F which provides for retrenchment compensation were inserted in the Principal Act by Act 43 of 1953. These Sections are clearly not retrospective in their operation and their benefits could not be claimed by workmen discharged before the date when the amending Act came into force."

14. I may also refer now to yet another decision of the Supreme Court. It is reported in 1963 (2) LLJ 65 (Rai Saheb Ramdayal Ghaisaram Oil Mills and Partnership Firm *Vs* Labour Appellate Tribunal). The facts were these: Some employees of the Oil Mills mentioned above were thrown out of employment, by

the closure of the Mills, in September 1952. Some time later on, the Mills were reopened. Some old workmen and some new workmen were employed on lower wages in the newly reopened Mills. The Union of the employees raised an industrial dispute to the effect that the old workmen, retrenched by the closure of the Mills, were required to be re employed in preference to new hands and all the employees were entitled to get the wages they were getting at the time of the closure of the Mills. For the first demand the Union relied, *inter-alia*, on Section 25H of the Industrial Disputes Act. Section 25H of the Industrial Disputes Act, which requires the retrenched workmen to be re-employed in preference to new hands was not on the statute in 1952, when the Mills were closed. It was brought on the statute by the Amending Act No. 43 of 1953. The amending Act provided that "it shall be deemed to have come into force on 24th October 1953". It is thus evident that Section 25H of the Act was not on the statute when the Mills were closed and the workmen were retrenched, but was in force when the order of Reference was made in 1955. In dealing with the applicability of Section 25H to the case, their Lordships have observed.:—

> We will however, say a word about the ground upon which the Tribunal thought it fit to give the retrenched workmen the benefit of the provisions of Section 25H on the grounds of social justice. Wide though the powers of an Industrial Tribunal are while adjudicating upon industrial disputes, it can not arrogate to itself the powers which the legislature alone can confer or do something which the legislature has not permitted to be done. Section 25H provides for re-employment of retrenched workmen in certain circumstances in preference to new comers. But Act 43 of 1953 which enacted the provision clearly provides in sub-section (2) of Section 1 thereof that "it shall be deemed to have come into force on 24th October 1953. Clearly, therefore, the provisions of this section can not apply to workmen who had been retrenched before this provision came into force. The legislature did no intend the provisions to come into force before 24th October 1953. When that is the mandate of the legislature, no Tribunal has jurisdiction on the basis of its own conception of social justice to ignore it and apply the provisions or its underlying principle to a dispute which arose before the provisions came into force."

15. The above decision very much governs the present case. The legislature has clearly said that the provisions of Section 2-A will come into force on such future date as the Central Government may appoint. This one provision is sufficient to hold that Section 2-A is not retrospective in effect or operation. Then as laid down by the Supreme Court in A. I. R. 1957 S. C 95, when deciding the rights of the parties regard must be had only to the law as it stood before the amendment of the Act came into force. In my opinion, therefore, the First Party Union cannot demand the application of the provisions of Section 2-A to the present case.

16. Mr. M. C. Narasimhan, however, has referred me to various decisions as also passages from some standard works to urge that the benefits of Section 2-A must be given to the aggrieved workman in the present case. He has submitted a synopsis of the authorities referred to by him and I have included it in the file. I now proceed to consider them.

17. The first decision relied on by Mr. M. C. Narasimhan is the one reported in 1966 (1) LLJ 430 (Jahiruddin-*Vs.* Model Mills Ltd. Nagapur). The facts in the case were these: The Government of Bombay, by a notification dated 25th March 1960, directed by way of an exemption) that Section 16 of the State Act and the provisions of Chapter V-A of the Industrial Disputes Act, should not apply to the Mills. Under Section 16 of the State Act, a dismissed worker could apply to the Labour Commissioner for his reinstatement, within six months from the date of his dismissal. The exemption granted to the Mills by the Government was withdrawn by it, by another Notification dated 4th April 1961. In between 25th March 1960 and 4th April 1961 some workmen were dismissed by the Mills on 6th January 1961. The dismissed employees filed applications before the Labour Commissioner under Section 16 of the State Act for their reinstatement, on 25th April 1961 *i.e.*, after the exemption was withdrawn. The Labour Commissioner allowed these applications. The Mills filed an appeal to the Industrial Court against the Labour Commissioner's order. The Industrial Court allowed the appeals. Thereafter the employees approached the High Court without success. Then they approached the Supreme Court. The Supreme Court allowed their appeal observing :—

> "The argument that the notification dated 4th April 1961 withdrawing the exemption is only prospective and not

retrospective proceeds on a fallacy. There is no question of the notification withdrawing an exemption being prospective or retrospective. Once the exemption is withdrawn, the original right, which was in existence but could not be enforced, revived.

The effect of an exemption granted by the Notification is not to destory the right but to suspend the remedy prescribed by Section 16 for enforcing the right during the period when the exemption was in force."

Evidently, the above decision can not apply to the case on hand. Section 16 of the State Act had conferred a right to the dismissed workmen to demand reinstatement. This right was only suspended during the time the exemption granted by the first notification was in froce. It had not been destroyed altogether. The right revived when the exemption was withdrawn by the Second Notification. There is no parallel between the case on hand and the reported decision. A new right, which was not in existence has been created in favour of dismissed workman with effect from 1st December 1965, by Section 2-A. Hence I am of the view that this reported decision would not help the workman in any way, in the present case.

18. The next proposition of Mr. M. C. Narasimhan is that when a remedial legislation is capable of two constructions, that construction which is more beneficial to the class in whose interest the law is enacted or furthers the policy of the Act, should be preferred. In support of this proposition, he has referred me to the decisions reported in :—

1. 1961 (1) LLJ 328 (Alembic Chemical Works Company Ltd., *Vs.* Its workmen)

2. 1963 (2) LLJ 638 (Buckingham and Carnatic Company Ltd., *Vs.* Venkatayya and another)

3. 1965 (1) LLJ 473 (Regional Provident Fund Commissioner *Vs.* Shibu Metal Works)

I do accept this principle propounded by him. But I do not think that Section 2-A is capable of two interpretations or there is any ambiguity in its interpretation. What is in doubt is not its interpretation but whether it applies to workmen whose services have come to an end before 1st December 1965. In my opinion, therefore, the above decisions do not help him.

19. Then Mr. M. C. Narasimhan has posed the question whether extending the benefits to Section 2-A to workmen dismissed or discharged before 1st December 1965 would mean giving effect to the provision with retrospective effect. His own answer to the question is in the negative. He has referred me to some passages in "Craies" on Statute Law. The paragraphs reproduced by him in the synopsis submitted before me run as under :—

> "Retrospective effect is spoken of with reference to statutes which affected vested rights.
>
> A retro-active or retrospective law, in the legal sense is one that take away or impairs vested rights acquired under existing laws or creates a new objection, imposes a new duty or attaches a new disability in respect to transactions or considerations already past."

Mr. M. C. Narasimhan argues that Section 2-A does not affect any vested rights or impose any new disability or duty. I do not however, agree with him. The question of "vested rights" shall have to be considered from the point of view of the workmen as well as the employers. It cannot be considered from the side of the workmen only, Before the introduction of Section 2-A an employer had the the right to defeat the claim of a dismissed workman and defend his own action on the ground that the dispute raised was not an industrial dispute because it had not been supported by the other workmen or the trade union. This right of his, has been taken away by Section 2-A. In this sense, it does affect the rights of one of the two parties. Hence retrospective effect cannot be given to it, unless the legislature itself has plainly said so.

20. In the same context Mr. M. C. Narasimhan has also referred me to Paragraph 278 at 576 of the Interpretation of Laws by Crawford, 1940 Edition. This paragraph also lays down principles identical to those reproduced from 'Craies" on Statute Law in the foregoing paragraph. I have already said above that if Section 2-A enacts only a procedural law, the question whether it is or is not retrospective, does not assume much significance. At the same time, I have held that Section 2-A enacts some substantive law. I have also shown above how it affects the rights of the employers. In these circumstances, therefore, I am inclined to reject this contention of Mr. M. C. Narasimhan.

21. Then Mr. M. C. Narasimhan has referred me to paragraph 282, 283, 285, 287 and 288 of the Interpretation of Laws by Crawford. Paragraph 282 deals with remedial statutes, paragraph 283 with curative statutes, paragraph 285 with statutes pertaining to procedure and legal remedies, paragraph 287 with remedies, and paragraph 288 with jurisdiction, venue and parties. Section 2-A of the Act, cannot be considered as a piece of curative legislation, by any stretch of imagination. The learned author has observed in the paragraph mentioned above that even remedial statutes and curative statutes, though generally retrospective in operation, cannot be given retrospective effect, if they affected vested rights etc. In paragraph 287, the learned author has said that the principles ennunciated in paragraph 286 will likewise apply whether the statute creates a new remedy or enlarges an existing one. In paragraph 286, he has observed :—

> "Obviously, certain new procedural statutes are of such character that their application retro-actively will tend to promote justice, without any consequential embarrassment or detriment to any of the parties concerned. Of course, retroactive effect in such instances cannot objectionable. But, on the other hand, even statutes relating to procedure may be productive of undesirable results, if applied retro-actively. Where this is true, they should be subject to the general rule which looks with disfavour upon retro-activity."

Now even assuming that Section 2-A enacts remedial law, it is evident as mentioned by me above, that it does affect the vested rights of one of the parties, namely, the employers, if it be given a retrospective effect. Hence I prefer to follow the general principle and hold that it cannot be given retrospective effect.

22. Mr. M. C. Narasimhan has also referred me to pages 190, 194, and 193 of the Interpretation of Statutes by Maxwell, 1937 Edition. The learned author has discussed the same principles in these pages. As I have already dealt with them, I do not propose to go over them once again.

23. Mr. M. C. Narasimhan finally tried to emphasise that Section 2-A only lays down procedural law. For this purpose, he has referred me to the following passage from Bindra, on Interpretation of Statutes, page 432, Fourth Edition :—

> "It is the law of actions—using the term actions in a wide sense to include all legal proceedings, civil or criminal,

> All the residue is substantive law, and relates not to the process of litigation, but to its purpose and subject matter. Substantive law is concerned with the ends which the administration of justice seeks; procedural law deals with the means and instruments by which those ends are obtained...

In all other cases it announces what steps must be taken in order to set in motion the machinery of the law counts for the benefit either of a plaintiff or of a defendent. "Thus it will be seen" says Venkataramana Rao J, in Girdharilal Son & Co., *Vs.* K. Gownder (A.I.R. 1938 Mad. 688, 692) "that under procedure are comprised all steps which a party must take in order to get the aid of the court for the enforcement of his rights. It therefore includes not only the steps which a party has to take after an action is launched in court but also steps which a party has to take before commencing it.'

Even if we apply the test given in the foregoing paragraph from Bindra to Section 2–A, we find that it does not enact procedural law but enacts substantive law.

24. After giving my anxious thought to all the points urged before me at the Bar, I am of the view that the benefits of Section 2-A are not availabte to workmen whose services have come to an end by an act of the employer, prior to 1st December 1965. I hold that Section 2-A is only prospective and not retrospective in its effect and operation.

25. Now I come to the last contention of Mr. M. C. Narasimhan. He argues that since Section 2-A had already come on the statute on the day the order of reference was made, the present dispute must be held to be an industrial dispute. According to him, in each case, in ascertaining whether an individual dispute has acquired the character of an industrial dispute, the test is whether at the date of Reference the dispute was taken up as supported by the Union of the workmen or by an appreciable number of workmen. He has relied on the following decisions:—

1. 1961 (2) LLJ 436 (Bombay Union of Journalists *Vs.* The Hindu).
2. 1962 (1) LLJ 409 [Indian Cable Co., *Vs.* Its workmen).

3. 1963 (1) LLJ 231 (Kartar Bus Service *Vs.* Gurdial Singh).

I certainly agree with the principles laid down in these decisions. Now we find that the order of reference in this case has been made after 1st December 1965., When the Section 2-A had already come on the statute. The Order of Reference has been made with respect to a dismissal that has taken place before 1st December 1965. Poovaiah's dismissal on 9th September 1965, was primarily an individual dispute. If it had to develop into an industrial dispute on the date of reference, it should have been supported by an appreciable number of the workmen of the same establishment or by the union of the workmen of the same establishment. Such is not the case of the First Party now. So, it is clear that on the date of Reference, this dispute had not become an industrial dispute on the above ground. It would have become an industrial dispute if Section 2-A was applicable to the present case. I have held that Section 2-A does not apply to the present case. On this ground also, the present dispute had not become an industrial dispute on the date of reference. After all, an order of Reference, shall have to be made by Government on the cause of action accrued to the concerned workman. It shall have to have a direct bearing on the cause of action. If the cause of action has accrued to a workmen before the appointed date that is 1st December 1965, and the legislature has not made Section 2-A retrospective in effect and operation, the Government cannot give him the right envisaged by this section by making the Reference under Section 10 on a date subsequent to the appointed date. By making the Reference on a subsequent date, the Government cannot give the workmen a right, which Section 2-A itself has not given him with respect to a cause of action accrued before 1st December 1965. To so construe the provision would mean, that Government would have powers higher than that of the Legislature. The Government can refer only an industrial dispute for adjudication under Section 10 of the Act. A duty is cast on the industrial court to examine the question whether the referred dispute is an industrial dispute, whatever be the date of reference. If the industrial court finds that what is referred to it for adjudication is not an industrial dispute, it cannot get jurisdiction to adjudicate upon it.

26. Even from the above point of view, therefore, it cannot be said that the present dispute is an industrial dispute. I would

therefore record my finding on the preliminary issue formulated above against the First Party Union.

27. Since the present dispute is not an industrial dispute, this court has no jurisdiction to adjudicate upon it. Hence I make the following Award.

**AWARD**

The reference is rejected on the ground that the referred dispute is not an industrial dispute. Parties do bear their own costs.

(Sd.)P. T. KADKOL,
*Presiding Officer,*
*Labour Court, Bangalore.*

"Copy"

P. T. KADKOL,
*Presiding Officer.*
*Labour Court, Bangalore.*